

46 Am. Jur. 2d Judges § 178

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

a. In General

§ 178. Notice of disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

Forms

Forms relating to notice of application to disqualify judge, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

Where notice to the opposing party of the intention to file a motion for recusal is required, a party may lose the right to a change of judge by failing to serve such notice.¹ For instance, a trial court's denial of a murder defendant's request for a change of judge was proper where the notice was not filed within 10 days after the state filed its notice of intent to seek the death penalty and thus was untimely.²

Authority has held that statutes requiring notice to be served on the parties means the other parties to the action, and also the judge, who is permitted to challenge the motion;³ whereas other authority has held that the notice requirement is for the benefit of the party who might wish to oppose the application and not for the benefit of the trial judge.⁴

Telephonic notice is sufficient where it is clearly calculated to inform and in fact does inform the parties of the hearing.⁵

Separate notice concerning the identity of the judge assigned to hear the motion is not required, and thus posting notice of the judge who will hear the motion is sufficient.⁶

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Footnotes

- 1 State v. Williams, 747 S.W.2d 635 (Mo. Ct. App. W.D. 1988); Danklefs v. Danklefs, 2003 WL 21796380 (Tex. App. San Antonio 2003).
- 2 State v. Manuel, 229 Ariz. 1, 270 P.3d 828 (2011).
- 3 In re Conduct of Kluge, 335 Or. 326, 66 P.3d 492 (2003).
- 4 State ex rel. Couch v. Stovall-Reid, 144 S.W.3d 895 (Mo. Ct. App. E.D. 2004).
- 5 Dishner v. Huitt-Zollars, Inc., 162 S.W.3d 370 (Tex. App. Dallas 2005).
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